

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
YONKERS AND HEMPSTEAD REALTY, LLC	:	ORDER
	:	DTA NO. 819336
for Revision of a Determination or for Refund of Real	:	
Estate Transfer Tax under Article 31 of the Tax Law for	:	
the Year 1999.	:	

Petitioner, Yonkers and Hempstead Realty, LLC, 7123 Ayrshire Lane, Boca Raton, Florida 33496, filed a petition for revision of a determination or for refund of real estate transfer tax under Article 31 of the Tax Law for the year 1999.

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on September 19, 2003 at 1:00 P.M., with all briefs submitted by November 3, 2003. The determination of the administrative law judge, which denied the petition and sustained the subject Notice of Determination, was issued on March 18, 2004.

On March 29, 2004, petitioner filed a motion for reargument of the determination pursuant to section 3000.16 of the Rules of Practice and Procedure of the Tax Appeals Tribunal. The Division of Taxation filed a response in opposition to the motion on April 5, 2004, and petitioner filed a reply to the Division's response on April 13, 2004, which date began the 90-day period for the issuance of this order.

Petitioner appeared throughout this proceeding by Leon C. Baker, Esq. The Division of Taxation appeared by Mark F. Volk, Esq. (Kevin R. Law, Esq., of counsel).

Based upon the motion papers and the hearing record, Timothy J. Alston, Administrative Law Judge, renders the following order.

Petitioner brings this motion for reargument based upon an asserted misapprehension by the administrative law judge of petitioner's 1999 Federal partnership tax return. Specifically, petitioner asserts that the administrative law judge erred in his conclusion that petitioner's 1999 Federal partnership return indicates that "the limited partners had a continuing interest in the partnership after January 1, 1999, because they were required to report taxable income on their individual returns for that year." Petitioner contends that no question had been raised by the Division's counsel regarding the 1999 partnership return "either before, during or after" the hearing and that there was therefore no discussion of the significance of the return.

A motion for reargument is "addressed to the discretion of the court" and is "designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law" (*Foley v. Roche* 68 AD2d 558, 418 NYS2d 588, 593; *see also, Matter of Varrington Corporation*, Tax Appeals Tribunal, November 9, 1995). A motion for reargument is not a "vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (*Foley v. Roche, supra*).

Petitioner's motion must be denied, as petitioner has not shown that the administrative law judge misapprehended petitioner's 1999 Federal partnership return as claimed.

The primary issue in the determination was whether a conveyance of real property was properly excluded from the real estate transfer tax pursuant to Tax Law § 1405(b)(6) as a "mere change of identity or form of ownership or organization where there is no change in beneficial ownership." The subject conveyance of real property occurred on January 1, 1999. Petitioner asserted that at the time of the conveyance the interests of all limited partners had been retired

and Leon C. Baker, as the sole remaining partner, owned 100 percent of the partnership's property. Since Mr. Baker also owned 50 percent of the grantee in the transaction (i.e., petitioner), petitioner asserted that the mere change exclusion of Tax Law § 1405(b)(6) should apply with respect to 50 percent of the consideration.

In the determination, the administrative law judge found that petitioner's case rested on the contention that the interests of the limited partners of the partnership had been retired at the time of the subject transfer. The administrative law judge reviewed the partnership's 1999 Federal partnership return, which was received in evidence at the hearing, and found that the return showed that there were 17 partners in 1999, all of whom had items of income and loss to be reported on their 1999 personal income tax returns. The partnership return also indicated that each partner had an interest in the partnership's capital at the beginning of the year and that each partner received a distribution during the year. The administrative law judge concluded that the 1999 partnership return was "strong evidence that the partnership consisted of 17 members at the time of the subject transfer on January 1, 1999" and thus held that petitioner failed to establish entitlement to the claimed mere change of identity exclusion.

Petitioner's assertion that the administrative law judge erroneously concluded that petitioner's 1999 Federal partnership return indicated that "the limited partners had a continuing interest in the partnership after January 1, 1999, because they were required to report taxable income on their individual returns for that year" misinterprets the determination. The determination does not conclude that the partners had a continuing interest in the partnership after January 1, 1999. It simply reports information contained on the 1999 return and concludes that such information is "strong evidence that the partnership consisted of 17 members at the time of the subject transfer on January 1, 1999." Since the tax in question is imposed on the

transfer of real property, the determination necessarily focused on the status of the partnership at the time of the transfer, i.e., January 1, 1999.

Petitioner asserted in the motion that no question had been raised by the Division's counsel regarding the 1999 partnership return "either before, during or after" the hearing and that there was therefore no discussion of the significance of the return. This contention is inconsistent with the record. As noted, the return was received in evidence at the hearing and the Division referred to and discussed the partnership return in its letter brief. In addition, the fact that the return listed partners other than Mr. Baker was discussed in this exchange during the hearing between the Division's representative and Mr. Baker, testifying on behalf of petitioner:

Mr. Law: And the partnership return, that lists 17 partners, correct?

Mr. Baker: Yes. And that's the correct time, too, because I said we postponed the time.

Mr. Law: You were one of those partners, correct?

Mr. Baker: I was the general partner.

Mr. Law: In Yonkers Realty Associates?

Mr. Baker: Yes.

Mr. Law: Did you ever purchase the other partners' partnership interests?

Mr. Baker: No.

Petitioner's motion thus appears to be merely an opportunity to reargue the same issue raised in the record and decided in the determination (*see, Foley v. Roche, supra*). Accordingly, the motion is more in the nature of an exception to the Tax Appeals Tribunal (*see*, 20 NYCRR 3000.17).

Petitioner's reply to the Division's response asserts errors of fact and law in the Division's response, but makes no further assertions of error in the determination.

Petitioner's motion for reargument is denied.

DATED: Troy, New York
May 6, 2004

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE